

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 595

Introduced by Senator Speier

February 23, 1999

An act to amend Section 2216 of the Business and Professions Code, and to amend ~~Section 1248.1~~ *Sections 1248, 1248.1, 1248.15, 1248.2, and 1248.25* of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 595, as amended, Speier. Outpatient settings.

Existing law provides for the regulation of outpatient settings by the Division of Licensing of the Medical Board of California. Existing law defines an outpatient setting as any facility, clinic, unlicensed clinic, center, office, or other setting that is not a part of a general acute care facility and where designated anesthesia is used in compliance with community standards in doses that when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

This bill would redefine outpatient setting for purposes of the provisions regulating outpatient settings.

Existing law prohibits any physician and surgeon from performing surgery in an outpatient setting using specified anesthesia unless the setting is one of enumerated health care settings.

Existing law prohibits a person from operating an outpatient setting unless the setting is one of enumerated health care settings.

This bill would make technical, nonsubstantive changes to these provisions.

Existing law requires the division to adopt standards for the accreditation of outpatient settings, including standards that require outpatient settings to meet certain conditions in order for procedures to be performed in that setting.

This bill would revise those conditions.

The bill also would require outpatient settings to post, as designated in the bill, a certificate of accreditation and the name and telephone number of the accrediting agency with instructions on the submission of complaints.

The bill would require outpatient settings and certain other settings to have a minimum of 2 staff persons on the premises, including one licensed health care professional, as long as a patient who has not been discharged from supervised care is present. The bill would require these settings to have a written discharge criteria and would provide that the transfer of a patient who does not meet discharge criteria shall constitute unprofessional conduct.

Existing law requires the division to notify the public, upon inquiry, whether an outpatient setting is accredited, certified, or licensed or whether the setting's accreditation, certification, or license has been revoked.

This bill also would require the division to notify the public pursuant to this provision about whether the outpatient setting's accreditation, certification, or license has been denied.

Existing law requires an accreditation agency to deny accreditation to an outpatient setting that does not meet the standards approved by the division and requires the accreditation agency to notify the outpatient setting of the reasons for the denial. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill also would require the accreditation agency to notify the division of the reasons that an outpatient setting is denied accreditation. The bill would authorize an outpatient setting to reapply for accreditation no sooner than 12 months after receiving notification of the denial.



Under existing law, the willful violation of these provisions regulating outpatient settings is a misdemeanor.

Because this bill would change the requirements of outpatient settings and accreditation agencies, it would change the definition of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: ~~no~~—yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2216 of the Business and
2 Professions Code is amended to read:
3 2216. (a) No physician and surgeon shall perform
4 procedures in an outpatient setting using anesthesia,
5 except local anesthesia or peripheral nerve blocks, or
6 both, complying with the community standard of
7 practice, in doses that, when administered, have the
8 probability of placing a patient at risk for loss of the
9 patient's life-preserving protective reflexes, unless the
10 setting is specified in Section 1248.1. Outpatient settings
11 where anxiolytics and analgesics are administered are
12 excluded when administered, in compliance with the
13 community standard of practice, in doses that do not have
14 the probability of placing the patient at risk for loss of the
15 patient's life-preserving protective reflexes.
16 (b) *On and after July 1, 2000, no physician and surgeon*
17 *shall perform procedures in an outpatient setting using*
18 *anesthesia, except local anesthesia, minor blocks, or*
19 *minimal oral tranquilization, unless the setting is*
20 *specified in Section 1248.1 of the Health and Safety Code.*
21 (c) The definition of "outpatient settings" contained
22 in subdivision (c) of Section 1248 shall apply to this
23 section.

1 SEC. 2. *Section 1248 of the Health and Safety Code is*
2 *amended to read:*

3 1248. For purposes of this chapter, the following
4 definitions shall apply:

5 (a) “Division” means the Division of Licensing of the
6 Medical Board of California.

7 (b) “Division of Medical Quality” means the Division
8 of Medical Quality of the Medical Board of California.

9 (c) “Outpatient setting” means any facility, clinic,
10 unlicensed clinic, center, office, or other setting that is not
11 part of a general acute care facility, as defined in Section
12 1250, and where anesthesia, ~~except local anesthesia or~~
13 ~~peripheral nerve blocks, or both, is used in compliance~~
14 ~~with the community standard of practice, in doses that,~~
15 ~~when administered have the probability of placing a~~
16 ~~patient at risk for loss of the patient’s life-preserving~~
17 ~~protective reflexes including intravenous, intramuscular,~~
18 ~~or rectal sedation or analgesia is administered.~~

19 “Outpatient setting” does not include, ~~among other~~
20 ~~settings,~~ any setting where ~~anxiolytics and analgesics are~~
21 ~~administered, when done so in compliance with the~~
22 ~~community standard of practice, in doses that do not have~~
23 ~~the probability of placing the patient at risk for loss of the~~
24 ~~patient’s life-preserving protective reflexes~~ *local*
25 *anesthesia, minor blocks, or minimal oral tranquilization*
26 *are administered.*

27 (d) “Accreditation agency” means a public or private
28 organization that is approved to issue certificates of
29 accreditation to outpatient settings by the division
30 pursuant to Sections 1248.15 and 1248.4.

31 SEC. 3. Section 1248.1 of the Health and Safety Code
32 is amended to read:

33 1248.1. No association, corporation, firm, partnership,
34 or person shall operate, manage, conduct, or maintain an
35 outpatient setting in this state, unless the setting is one of
36 the following:

37 (a) An ambulatory surgical center that is certified to
38 participate in the Medicare program under Title XVIII
39 (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security
40 Act.

(b) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, and located on land recognized as tribal land by the federal government.

(c) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies.

(d) Any primary care clinic licensed under subdivision (a) and any surgical clinic licensed under subdivision (b) of Section 1204.

(e) Any health facility licensed as a general acute care hospital under Chapter 2 (commencing with Section 1250).

(f) Any outpatient setting to the extent that it is used by a dentist or physician and surgeon in compliance with Article 2.7 (commencing with Section 1646) or Article 2.8 (commencing with Section 1647) of Chapter 4 of Division 2 of the Business and Professions Code.

(g) An outpatient setting accredited by an accreditation agency approved by the division pursuant to this chapter.

(h) A setting, including, but not limited to, a mobile van, in which equipment is used to treat patients admitted to a facility described in subdivision (a), (d), or (e), and in which the procedures performed are staffed by the medical staff of, or other healthcare practitioners with clinical privileges at, the facility and are subject to the peer review process of the facility but which setting is not a part of a facility described in subdivision (a), (d), or (e).

(i) Nothing in this section shall relieve an association, corporation, firm, partnership, or person from complying with all other laws that are otherwise applicable.

SEC. 4. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The division shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum,

1 include standards for the following aspects of the settings’
2 operations:

3 (1) Outpatient setting allied health staff shall be
4 licensed or certified to the extent required by state or
5 federal law.

6 (2) (A) Outpatient settings shall have a system for
7 facility safety and emergency training requirements.

8 (B) There shall be onsite equipment, medication, and
9 trained personnel to facilitate handling of services sought
10 or provided and to facilitate handling of any medical
11 emergency that may arise in connection with services
12 sought or provided.

13 (C) In order for procedures to be performed in an
14 outpatient setting as defined in Section 1248, the
15 outpatient setting shall do one of the following:

16 (i) Have a written transfer agreement with a local
17 accredited or licensed acute care hospital, approved by
18 the facility’s medical staff.

19 (ii) Permit surgery only by a licensee who has
20 admitting privileges at a local accredited or licensed
21 acute care hospital, with the exception that licensees who
22 may be precluded from having admitting privileges by
23 their professional classification or other administrative
24 limitations, shall have a written transfer agreement with
25 licensees who have admitting privileges at local
26 accredited or licensed acute care hospitals.

27 ~~(iii) Submit for approval by an accrediting agency, a~~
28 ~~detailed procedural plan for handling medical~~
29 ~~emergencies that shall be reviewed at the time of~~
30 ~~accreditation. No reasonable plan shall be disapproved by~~
31 ~~the accrediting agency.~~

32 (D) All physicians and surgeons transferring patients
33 from an outpatient setting shall agree to cooperate with
34 the medical staff peer review process on the transferred
35 case, the results of which shall be referred back to the
36 outpatient setting, if deemed appropriate by the medical
37 staff peer review committee. If the medical staff of the
38 acute care facility determines that inappropriate care was
39 delivered at the outpatient setting, the acute care
40 facility’s peer review outcome shall be reported, as

1 appropriate, to the accrediting body, the Health Care
2 Financing Administration, the State Department of
3 Health Services, and the appropriate licensing authority.

4 (3) The outpatient setting shall permit surgery by a
5 dentist acting within his or her scope of practice under
6 Chapter 4 (commencing with Section 1600) of the
7 Business and Professions Code or physician and surgeon,
8 osteopathic physician and surgeon, or podiatrist acting
9 within his or her scope of practice under Chapter 5
10 (commencing with Section 2000) of the Business and
11 Professions Code or the Osteopathic Initiative Act. The
12 outpatient setting may, in its discretion, permit
13 anesthesia service by a certified registered nurse
14 anesthetist acting within his or her scope of practice
15 under Article 7 (commencing with Section 2825) of
16 Chapter 6 of the Business and Professions Code.

17 (4) Outpatient settings shall have a system for
18 maintaining clinical records.

19 (5) Outpatient settings shall have a system for patient
20 care and monitoring procedures.

21 (6) (A) Outpatient settings shall have a system for
22 quality assessment and improvement.

23 (B) Members of the medical staff and other
24 practitioners who are granted clinical privileges shall be
25 professionally qualified and appropriately credentialed
26 for the performance of privileges granted. The outpatient
27 setting shall grant privileges in accordance with
28 recommendations from qualified health professionals,
29 and credentialing standards established by the outpatient
30 setting.

31 (C) Clinical privileges shall be periodically
32 reappraised by the outpatient setting. The scope of
33 procedures performed in the outpatient setting shall be
34 periodically reviewed and amended as appropriate.

35 (7) Outpatient settings regulated by this chapter that
36 have multiple service locations governed by the same
37 standards may elect to have all service sites surveyed on
38 any accreditation survey. Organizations that do not elect
39 to have all sites surveyed shall have a sample, not to
40 exceed 20 percent of all service sites, surveyed. The actual

1 sample size shall be determined by the division. The
2 accreditation agency shall determine the location of the
3 sites to be surveyed. Outpatient settings that have five or
4 fewer sites shall have at least one site surveyed. When an
5 organization that elects to have a sample of sites surveyed
6 is approved for accreditation, all of the organizations' sites
7 shall be automatically accredited.

8 *(8) Outpatient settings shall post the certificate of*
9 *accreditation in a location readily visible to patients and*
10 *staff.*

11 *(9) Outpatient settings shall post the name and*
12 *telephone number of the accrediting agency with*
13 *instructions on the submission of complaints in a location*
14 *readily visible to patients and staff.*

15 *(10) Outpatient settings shall have written discharge*
16 *criteria.*

17 *(b) Outpatient settings, and settings excluded from*
18 *the definition of "outpatient setting" pursuant to*
19 *subdivision (c) of Section 1248, shall have a minimum of*
20 *two staff persons on the premises, one of whom shall be*
21 *a licensed health care professional, as long as a patient*
22 *who has not been discharged from supervised care is*
23 *present. These settings shall have written discharge*
24 *criteria. The transfer of a patient who does not meet the*
25 *discharge criteria to an unlicensed setting shall constitute*
26 *unprofessional conduct.*

27 *(c) An accreditation agency may include additional*
28 *standards in its determination to accredit outpatient*
29 *settings if these are approved by the division to protect*
30 *the public health and safety.*

31 ~~*(e)–*~~

32 *(d) No accreditation standard adopted or approved by*
33 *the division, and no standard included in any certification*
34 *program of any accreditation agency approved by the*
35 *division, shall serve to limit the ability of any allied*
36 *healthcare practitioner to provide services within his or*
37 *her full scope of practice. Notwithstanding this or any*
38 *other provision of law, each outpatient setting may limit*
39 *the privileges, or determine the privileges, within the*
40 *appropriate scope of practice, that will be afforded to*

1 physicians and allied health care practitioners who
2 practice at the facility, in accordance with credentialing
3 standards established by the outpatient setting in
4 compliance with this chapter. Privileges may not be
5 arbitrarily restricted based on category of licensure.

6 *SEC. 5. Section 1248.2 of the Health and Safety Code*
7 *is amended to read:*

8 1248.2. (a) Any outpatient setting may apply to an
9 accreditation agency for a certificate of accreditation.
10 Accreditation shall be issued by the accreditation agency
11 solely on the basis of compliance with its standards as
12 approved by the division under this chapter.

13 (b) The division shall obtain and maintain a list of all
14 accredited, certified, and licensed outpatient settings
15 from the information provided by the accreditation,
16 certification, and licensing agencies approved by the
17 division, and shall notify the public, upon inquiry,
18 whether a setting is accredited, certified, or licensed, or
19 whether the setting's accreditation, certification, or
20 license has been *denied or* revoked.

21 *SEC. 6. Section 1248.25 of the Health and Safety Code*
22 *is amended to read:*

23 1248.25. If an outpatient setting does not meet the
24 standards approved by the division, accreditation shall be
25 denied by the accreditation agency, which shall provide
26 the outpatient setting *and the division with* notification
27 of the reasons for the denial. An outpatient setting may
28 reapply for accreditation ~~at any time~~ *no sooner than 12*
29 *months* after receiving notification of the denial.

30 *SEC. 7. No reimbursement is required by this act*
31 *pursuant to Section 6 of Article XIII B of the California*
32 *Constitution because the only costs that may be incurred*
33 *by a local agency or school district will be incurred*
34 *because this act creates a new crime or infraction,*
35 *eliminates a crime or infraction, or changes the penalty*
36 *for a crime or infraction, within the meaning of Section*
37 *17556 of the Government Code, or changes the definition*

1 *of a crime within the meaning of Section 6 of Article*
2 *XIII B of the California Constitution.*

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